

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Valentina Concha-Toro	Team: Squad #12	CCRB Case #: 201901490	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 02/08/2019 10:45 PM	Location of Incident: in front of § 87(2)(b)	Precinct: 77	18 Mo. SOL 8/8/2020	EO SOL 3/25/2021	
Date/Time CV Reported Sat, 02/09/2019 12:16 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 02/18/2019 12:34 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Craig Mcgrath	26900	955165	077 PCT
2. POM Steven Rupnick	27055	955426	077 PCT
3. SGT Kevin Mccarthy	03347	949290	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Steven Rupnick	Abuse: Police Officer Steven Rupnick stopped § 87(2)(b)	§ 87(2)(b)
B.SGT Kevin Mccarthy	Abuse: Sergeant Kevin Mccarthy stopped § 87(2)(b)	§ 87(2)(b)
C.POM Steven Rupnick	Abuse: Police Officer Steven Rupnick frisked § 87(2)(b)	§ 87(2)(b)
D.SGT Kevin Mccarthy	Abuse: Sergeant Kevin Mccarthy frisked § 87(2)(b)	§ 87(2)(b)
E.POM Steven Rupnick	Abuse: Police Officer Steven Rupnick searched § 87(2)(b)	§ 87(2)(b)
F.SGT Kevin Mccarthy	Abuse: Sergeant Kevin Mccarthy searched § 87(2)(b)	§ 87(2)(b)
G.POM Craig Mcgrath	Abuse: Police Officer Craig Mcgrath failed to provide § 87(2)(b) with a business card	§ 87(2)(b)
H.POM Steven Rupnick	Abuse: Police Officer Steven Rupnick failed to provide § 87(2)(b) with a business card	§ 87(2)(b)
I.SGT Kevin Mccarthy	Abuse: Sergeant Kevin Mccarthy failed to provide § 87(2)(b) with a business card	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On February 9, 2019, § 87(2)(b) submitted this complaint with the Internal Affairs Bureau (IAB). On February 18, 2019, this case was received at the CCRB via IAB log number 19-5431.

On February 8, 2019, at approximately 10:45 p.m. Police Officer Steven Rupnick and Sergeant Kevin McCarthy of the 77th Precinct stopped § 87(2)(b) who was walking in the vicinity of § 87(2)(b) in Brooklyn (Allegations A and B: Abuse of Authority – Stop, § 87(2)(g) Police Officer Rupnick frisked § 87(2)(b) (Allegation C: Abuse of Authority – Frisk, § 87(2)(g) Sergeant McCarthy frisked § 87(2)(b)'s backpack (Allegation D: Abuse of Authority – Frisk, § 87(2)(g) Police Officer Rupnick searched § 87(2)(b)'s pant pockets (Allegation E: Abuse of Authority – Search, § 87(2)(g) Sergeant McCarthy searched his backpack (Allegation F: Abuse of Authority – Search, § 87(2)(g) Police Officer Craig McGrath asked § 87(2)(b) where he had come from. Police Officer McGrath, Police Officer Rupnick, and Sergeant McCarthy walked to the vehicle and left the location. Police Officer McGrath, Police Officer Rupnick, and Sergeant McCarthy did not provide § 87(2)(b) with a Right To Know Act business card (Allegations G, H, and I: Abuse of Authority – Failure to provide RTKA Card, § 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

Two surveillance videos were obtained during the investigation from § 87(2)(b) Brooklyn (Board Reviews 1 and 2). Body-worn camera footage was requested and yielded negative results.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Steven Rupnick stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Sergeant Kevin McCarthy stopped § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Steven Rupnick frisked § 87(2)(b)

It is undisputed that at approximately 10:45 p.m. on February 18, 2019, in front of § 87(2)(b) Police Officer Steven Rupnick and Sergeant Kevin McCarthy stopped § 87(2)(b) and Police Officer Rupnick frisked § 87(2)(b)

It is also undisputed that § 87(2)(b) and the unmarked patrol vehicle which Sergeant McCarthy and Police Officer Rupnick were in, were both traveling eastbound on § 87(2)(b) § 87(2)(b) was traveling to the right of the unmarked vehicle.

§ 87(2)(b) was interviewed at the CCRB on February 25, 2019 (Board Review 03), § 87(2)(b) provided telephone statement on February 21, 2019 (Board Review 04), and it was generally consistent with his CCRB interview.

§ 87(2)(b) was walking eastbound on § 87(2)(b) on his way to work. He was wearing cargo pants, a hooded sweatshirt, a camouflage jacket and a backpack. § 87(2)(b) had a cellphone in his left front pants pocket, keys in his right front pants pocket, a jump rope in the right thigh

pants pocket, and a check book in his left thigh pocket. § 87(2)(b) did not have anything in his hands. Police Officer Rupnick exited the front passenger side of the vehicle and instructed § 87(2)(b) to stop and lift his jacket and hooded sweatshirt. § 87(2)(b) stopped and lifted his jacket and hooded sweatshirt to show him waistband. Police Officer Rupnick asked § 87(2)(b) if he had any weapons. § 87(2)(b) told Police Officer Rupnick he did not have any weapons. Police Officer approached § 87(2)(b) Sergeant McCarthy exited from the rear of the vehicle and approached § 87(2)(b) and Police Officer Rupnick.

Police Officer Rupnick was interviewed at the CCRB on March 17, 2019 (Board Review 05). Police Officer Rupnick stated that he had no independent recollection of the incident but had a detailed memo book entry of the incident (Board Review 06). Police Officer Rupnick prepared the Stop and Frisk Report (Board Review 07). From his independent recollection, Police Officer Rupnick testified he could not describe the object he had seen in § 87(2)(b)'s waist area other than what was stated in his memo book. Police Rupnick's memo book and the UF-250 stated that upon sight, § 87(2)(b) had a hand in his waist band adjusting what appeared to be the handle of a weapon. There is no description of the object believed to be a weapon in Police Officer Rupnick's memo book or an indication of the type of weapon. Police Officer Rupnick did not recall what initially brought his attention to § 87(2)(b) or what additional factors lead him to believe § 87(2)(b) had a weapon on his person. Police Officer Rupnick did not recall instructing § 87(2)(b) at the initiation of the stop to lift his jacket or hoodie or hearing any other officer do so. Police Officer Rupnick stated there were no additional factors which lead to the frisk of § 87(2)(b).

Sergeant McCarthy was interviewed at the CCRB on March 24, 2019 (Board Review 08). Sergeant McCarthy stated that from his position in the rear passenger seat of the vehicle he observed § 87(2)(b) from behind for approximately one minute. Sergeant McCarthy said upon initial observation, § 87(2)(b) had his hands in his pockets at hip area adjusting an object. He did not recall if § 87(2)(b)'s hands were in his front pants pockets or in his jacket pockets. Sergeant McCarthy at this moment believed the object was a firearm. As Police Officer Craig McGrath drove alongside § 87(2)(b) noticing the officers were present, adjusted his hands more, stopped moving, and turned his body away from the vehicle to shield the right side of his hip. Sergeant McCarthy observed an L-shaped object at the area between the middle to right side of § 87(2)(b)'s hip which Sergeant McCarthy believed was the handle of a firearm. Sergeant McCarthy, Police Officer Rupnick and Police Officer McGrath exited the vehicle and approached § 87(2)(b) removed his hands from his pockets. Sergeant McCarthy did not recall instructing § 87(2)(b) at the initiation of the stop to lift his jacket or hoodie or hearing any officer do so.

Surveillance footage from channel one from § 87(2)(b) (Board Review 02) faces westbound on § 87(2)(b). At 4:21 minutes in the recording § 87(2)(b) can be observed with his hands in his hoodie pockets. The left side of § 87(2)(b)'s body is on the same side as the roadway.

Surveillance footage from channel eight from § 87(2)(b) (Board Review 01) faces eastbound on § 87(2)(b). The roadway is on the left side of his body. At 2:24 minutes into the video Police Officer Rupnick exits from the front passenger seat, § 87(2)(b) stops, and turns toward Police Officer Rupnick. Police Officer Rupnick approaches § 87(2)(b) as § 87(2)(b).

removes his hands from his pockets and lifts his arms to the sides of his body. Sergeant McCarthy exits from the driver side rear seat and approaches § 87(2)(b) and Police Officer Rupnick. Police Officer Rupnick frisks § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Additionally, Sergeant McCarthy stated that his belief that § 87(2)(b) was in possession of a firearm in his waist area came from when he first observed an L-shaped object at the middle to right side of § 87(2)(b)'s body. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

According to People v. De Bour, 40 N.Y.2d 210 (1976) (Board Review 09), a stop may be conducted when an officer has reasonable suspicion to believe that an individual has committed, is committing, or will commit a crime. An officer may frisk an individual when the officer has reasonable suspicion that the individual is armed.

Police Officer Rupnick was determined to be the contact officer and the officer who initiated the stop, but because Sergeant McCarthy was the supervisor on scene the allegation was pleaded against both Police Officer Rupnick and Sergeant McCarthy.

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Allegation (D) Abuse of Authority: Sergeant Kevin McCarthy frisked § 87(2)(b)

Allegation (F) Abuse of Authority: Sergeant Kevin McCarthy searched § 87(2)(b)

It is undisputed that Sergeant McCarthy frisked and searched § 87(2)(b)'s property.

During § 87(2)(b)'s CCRB interview (Board Review 03), he stated he had a protein shaker cup, pre-work out powder, gloves, and a jump rope in the last compartment of his backpack. § 87(2)(b) did not observe it, but he felt Sergeant McCarthy touch his backpack and heard the rattle of the shaker cup which lead § 87(2)(b) to believe Sergeant McCarthy had opened his backpack.

During Sergeant McCarthy's CCRB interview (Board Review 08), he stated § 87(2)(b)'s backpack remained on his back during the entire incident. Sergeant McCarthy approached § 87(2)(b)'s back as he was being stopped for the alleged firearm in his waistband. Sergeant McCarthy observed a second L-shaped object with grooves and striations pressed against the fabric of § 87(2)(b)'s backpack. Sergeant McCarthy stated it looked like the handle of a firearm. Sergeant McCarthy touched the object and felt it to be a hard, grip shaped object. Sergeant McCarthy believed the object to be the handle of a firearm and searched the backpack. The object was work out equipment, either a jump rope or a hand strengthener.

Police Officer Rupnick and Police Officer McGrath in their CCRB interviews (Board Reviews 05 and 11) testified that they did not have any recollection regarding the details of the frisk and search of the backpack. The Stop and Frisk Report (Board Review 07) stated that a Police Officer Rupnick was frisk and search of § 87(2)(b)'s backpack was performed but does not

Surveillance footage from channel 8 from § 87(2)(b) (Board Review 01), from 2:15 minutes to 3:10 minutes into the video, captures § 87(2)(b) wearing his backpack for the duration of the incident. The video does not capture with enough detail § 87(2)(b)'s backpack to observe any items.

§ 87(2)(g)

According to People v. De Bour, 40 N.Y.2d 210 (1976) (Board Review 09), an officer may frisk an individual when the officer has reasonable suspicion to believe an individual is armed. A

subsequent search of the immediate area may be performed upon reasonable suspicion that the object frisked is a weapon.

§ 87(2)(b), § 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Steven Rupnick searched § 87(2)(b)

During § 87(2)(b)'s CCRB statement (Board Review 03) he stated that Police Officer Rupnick first opened the button on his right cargo pant thigh pocket and reached his entire hand into the pocket, then Police Officer Rupnick opened the button on the left thigh pocket and placed his entire hand into the pocket.

Police Officer Rupnick in his CCRB interview (Board Review 05) denied opening and placing his hands into § 87(2)(b)'s pockets. He denied any other officer doing so. Police Officer Rupnick said if he had searched § 87(2)(b)'s pockets he would have documented the search in the Stop and Frisk Report (Board Review 07).

From 2:30 minutes to 3:11 minutes into the video surveillance from channel 8 (Board Review 01), based on the position of the individuals in the incident, Police Officer Rupnick's hands are in the vicinity of § 87(2)(b)'s thigh pocket. Police Officer Rupnick is observed touching § 87(2)(b)'s pockets, but the video does not capture whether Police Officer Rupnick's hands enter into any of § 87(2)(b)'s pockets.

The Stop and Frisk Report (Board Review 07) does not state that any search of § 87(2)(b)'s pants pockets was performed.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

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Civilian and Officer CCRB Histories

- This is the only CCRB case to which § 87(2)(b) has been a party (Board Review 14).
- Sergeant McCarthy has been a member of service for eight years and has 11 prior CCRB allegations in four cases. § 87(2)(g)
- ○ CCRB Case #201200526 in which an allegation of a frisk was made was substantiated. The CCRB board recommended command discipline. The NYPD disposition resulted in instruction.
- Police Officer Rupnick has been a member of service for five years and has 13 prior CCRB allegations in four cases with no substantiated allegations. § 87(2)(g)
- Police Officer McGrath has been a member of service for five years and has 18 previous CCRB allegations in eight cases with no substantiated allegations. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of criminal conviction (Board Review 15).

- A Notice of Claim search was submitted to the New York City Comptroller's Office on May 9, 2019, and on May 17, 2019, an email was received advising that no documents had been located (Board Review 16).

Squad No. 12

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date